

**MINUTES**  
**UTAH SOLID AND HAZARDOUS WASTE CONTROL BOARD MEETING**  
**Utah Department of Environmental Quality**  
**168 North 1950 West, Building #2, (Conf. Room 101), SLC, Utah**

**January 12, 2006**

**Board Members Present:** Craig Anderson, (Chair), John Newman (Vice-Chair), Scott Bruce, Carlton Christensen, Kory Coleman, William Doucette, Craig Forster, Gary Mossor, Kevin Murray, Dianne Nielson, Dennis Riding.

**Staff Members Present:** Scott Anderson, Dennis Downs, Martin Gray, Brad Johnson, Dale Marx, Cheryl Prawl, Otis Willoughby, Raymond Wixom.

**Others Present:** Bryan Slade, Elizabeth Lowes, Kris Snow, Dan Shrum, Trace Salmon, Clint Warby, Mary Pat Buckman, Pih-fhai Hut, Walton Levi, Judy Fahys, Mike Reed, Rick Rathbun.

**I. The meeting was called to order at 1:05 p.m.**

**II. Recognition of Richard Rathbun**

Richard Rathbun was given a plaque in recognition of his many years of service as Board counsel and for his contributions to the Utah Department of Environmental Quality. Mr. Rathbun is now working with the Department of Natural Resource, State Lands. Craig Anderson, Chair, also thanked Mr. Rathbun for the assistance he has provided to other agencies and entities including the Salt Lake Valley Health Department and the Salt Lake County District Attorney's Office.

Mr. Rathbun stated that providing counsel to the Board has been very rewarding and a duty in which he has taken great pride. Mr. Rathbun stated that this Board is basically a citizen's board and that this particular Board epitomizes citizens' government at its very best.

Mr. Downs also thanked Mr. Rathbun on behalf of the DSHW staff. Mr. Downs stated that the DSHW staff has appreciated working with Mr. Rathbun and thanked him for his assistance and counsel throughout the years.

Mr. Anderson stated that Raymond Wixom will serve as counsel to the Board. If any conflict of interest issues arise, possibly Laura Lockhart, Denise Chancellor or another attorney directed by the Attorney General's Office, may be temporarily assigned to serve as Board counsel.

**III. Approval of minutes for the November 10, 2005 Board meeting (Board Action Item)**

**It was motioned by Bill Doucette and seconded by Dennis Riding and unanimously carried that the November 10, 2005, Board meeting minutes be approved.**

**III. Underground Storage Tanks Update**

Brad Johnson informed the Board members that on December 21, 2005, representatives from the Division of Environmental Response and Remediation (DERR) attended a Utah Privatization Policy Board (Privatization Board) meeting to discuss the Petroleum Storage Tank (PST) Fund. In the meeting, information was provided in response to a number of questions that were asked previously. At the end of the discussion, the Privatization Board decided that it was not appropriate for the PST Fund to

become privatized at this time. Also, as a result of the discussions that took place, an issue arose in regards to incorporating risk into the PST Fund fees. This topic will be discussed with the Utah Underground Storage Tank Advisory Task Force (UST Task Force) over the next few months. Some examples of what the DERR will be looking at are the age and construction of tanks, the type of corrosion protection used, and the method used for leak detection. It is also possible that the results of these discussions with the UST Task Force may come before the Board for possible rule and/or statute changes.

Mr. Johnson then stated that in regards to the statute change to require owners/operators to have all or none of their tanks on the PST Fund, a Legislative Bill file has been opened by Representative Ure for the upcoming Legislative Session. In preparing for this Bill, the DERR worked closely with the Legislative Analyst to prepare the language to be used in the statutory change. It is anticipated that the Bill will be introduced early in the Legislative Session.

Mr. Johnson also stated that the DERR has worked with the UST Task Force to develop rules for the cleanup standards used when closing out facilities. When these standards were presented to the UST Task Force in the last meeting, there was a general consensus and agreement to the standards proposed. These cleanup standards will be presented to the Board next month to get approval to start the formal rule making process.

Carlton Christensen then inquired if the recent changes made to the PST Loan Fund to help owners/operators upgrade their tanks have been beneficial. Mr. Johnson stated that it has been quite beneficial as numerous loans have been made to help with upgrading tanks. This is due to the fact that it is now much easier for owners/operators to take out the loans.

## **V. Clandestine Drug Lab Update**

Mr. Johnson continued on by informing the Board that recently, the DERR had two applicants for the Contractor Cleanup Certification Program regarding Clandestine Drug Labs. Both of the applicants passed the exam and gave positive feedback to the DERR regarding the program and the exam itself. Based on some inquiries received within the last few weeks, it is also expected that additional applicants will seek to become certified.

## **VI. Used Oil Section**

### **A. Proposed Stipulation and Consent Order between the Board and Basin Petroleum Inc. (Board Action Item)**

Cheryl Prawl reviewed the Proposed Stipulation and Consent Order (SCO) No. 0508021 between the Board and Basin Petroleum Inc. Basin Petroleum is a permitted used oil transporter and used oil transfer facility located in Vernal, Utah. Basin Petroleum sells and delivers refined petroleum products to various sites involved with natural gas and/or crude exploration. The company also collects used oil from these operations and consolidates it in a 2,900 gallon tank located at their Vernal facility where it is later transported off site by a permitted used oil transporter.

On September 23, 2004, a Warning Letter was issued to Basin Petroleum for non-compliance with certain applicable regulatory standards. Basin Petroleum responded satisfactorily to most of the issues outlined in the Warning Letter, but did not satisfactorily address the pollution liability and closure plan/reclamation surety issues. A Notice of Violation (NOV) was issued on May 25, 2005. The NOV was issued because Basin Petroleum failed to properly demonstrate sufficient financial responsibility to

cover environmental pollution liability and failed to modify and update its closure plan and associated reclamation surety mechanism for its used oil transfer facility.

To resolve the NOV, a proposed SCO has been negotiated with Basin Petroleum. Under the terms of the proposed SCO, Basin Petroleum will pay \$2,442.00 within 90 days of the effective date of the proposed SCO. The public comment period began on October 25, 2005 and ended on November 23, 2005. No comments were received. The Division recommends that the Board approve the proposed SCO.

Craig Anderson asked if all of Basin Petroleum's non-compliance issues have been resolved. Cheryl Prawl stated Basin Petroleum is now in compliance with the required regulatory standards. Ms. Prawl further stated that Basin Petroleum has submitted a copy of its Environmental Pollution Liability Insurance and has revised its closure plan for the facility and has increased its reclamation surety.

**It was motioned by William Doucette and seconded by Craig Forster and unanimously carried to approve Proposed Stipulation and Consent Order (SCO) No. 0508021 between the Board and Basin Petroleum Inc.**

#### **B. Proposed Changes to the Used Oil Management Rules (Board Action Item)**

Cheryl Prawl stated that at the October 2005 Board meeting, proposed rule changes were presented to the Board pertaining to "equivalent secondary containment." The Board approved the proposed rule changes for public comment and formal rulemaking. Cheryl Prawl stated that the State's Used Oil Management Rules have never had the requirement for the "equivalent secondary containment system;" it is part of the federal requirements to allow an "equivalent secondary containment." However, when the State's Used Oil Rules were copied and adopted additional language was added stating, "as approved by the Executive Secretary." In 1997, the US EPA took the position that the State's Used Oil Rules were more stringent than the federal government requirements because the State is requiring the Executive Secretary to sign off on "equivalent secondary containment." The Used Oil Program was not comfortable with the rules merely stating "equivalent secondary containment," and therefore it was decided that the Executive Secretary should have the option to review it and approve it and therefore the requirement was deleted. In 2005, the EPA notified the State and declared that by deleting the requirement entirely, the State is more stringent than the federal government requirements. Ms. Prawl stated the State's Used Oil State Program can be more stringent than the federal government requirements and the decision was made to bring this issue before the Board and go through the rule making process and see what types of comments will be received by industry by deleting this requirement.

During the public comment period which ended on December 16, 2005, three comments were received. Two of the comments were **not** in favor of the proposed rule changes which would allow for an "equivalent secondary containment system" and one commenter favored the proposed rule changes.

Based on the comments received and industry not wanting the requirement in the Used Oil Rules, the Division is recommending that the proposed changes to the Used Oil Management Rules regarding "equivalent secondary containment" be allowed to lapse without taking action to approve the proposed rule changes.

Dennis Downs clarified that if in the future an individual wants to pursue some type of alternative "equivalent secondary containment system/method" that they have the right to petition the Board to change the rules to allow them to do that.

**It was motioned by John Newman and seconded by Kory Coleman and unanimously carried that the proposed changes to the Used Oil Management Rules regarding “equivalent secondary containment” be allowed to lapse without taking action to approve the proposed rule changes.**

## **VII. Proposed Rule Change**

### **Proposed Changes to the Utah Hazardous Waste Rules, R315-102 (penalty policy) to reflect recent changes to the Utah Solid and Hazardous Waste Act made by the Utah State Legislature (Board Action Item)**

Scott Anderson reviewed the proposed changes to R315-102 of the Utah Hazardous Waste Rules (penalty policy) to reflect recent changes to the Utah Solid and Hazardous Waste Act made by the Utah State Legislature. Mr. Anderson stated that during the 2005 legislative session, the Legislature passed Senate Bill 24. Among other things, Senate Bill 24 raised the maximum daily penalties for violations of the Solid and Hazardous Waste Act from \$10,000 to \$13,000 per day of violation. This statutory change necessitated a change in the Board’s penalty policy because the penalty ranges associated with the various components of the policy are tied directly to the amount of penalty in the statute. This issue was brought before the Board in November and the Board approved the formal rulemaking process to begin. The public comment period began on December 1, 2005 and ended on January 3, 2006. No comments were received. Mr. Anderson recommended that the Board adopt the proposed changes to R315-102 with an effective date of January 20, 2006.

**It was motioned by William Doucette and seconded by Carlton Christensen and unanimously carried that the proposed rule changes to R315-102 be approved for final adoption with an effective date of January 20, 2006.**

## **VIII. Commercial/Federal Facilities**

### **Envirocare request for a site-specific treatment variance for waste code D009 (High Mercury-Subcategory Inorganic) (Board Action Item)**

Otis Willoughby stated that this is a renewal of a request that has been before the Board four times before. Mr. Willoughby stated on November 29, 2005, Envirocare of Utah, Inc. submitted a request to the Executive Secretary for a one-time, site-specific treatment variance from the Utah Hazardous Waste Management Rules. The variance request seeks authorization to stabilize a waste stream that carries waste code D009.

The technology-based treatment codes for this material are either IMERC (incineration followed by recovery) or RMERC (roasting/retort followed by recovery). The RMERC and IMERC processes generate secondary waste streams. The secondary waste streams (when greater than 260 mg/kg mercury) are required to be further stabilized to a level of .2 mg/L based on the toxicity characteristic leaching procedure (TCLP) in SW846. Envirocare is proposing to treat the waste directly with a stabilization method rather than going through the initial retort or incineration of the waste. This proposal is made due to the mixed waste nature of the waste stream, i.e., a hazardous waste with a radioactive component. The hardship for this case is that radioactive mercury cannot be recycled and it would require extra handling of the waste.

The US EPA has issued a Determination of Equivalent Treatment (DET) for such High Mercury Subcategory wastes. In its determination, the US EPA concluded that for wastes that contain mercury and are radioactive, the recovery portion of RMERC and IMERC may not be appropriate and that alternative treatment processes should be pursued. Envirocare is proposing to stabilize the waste to a

level below 0.2 mg/L, based on the TCLP method. This would satisfy the high mercury subcategory requirement. In addition, LDR compliance will be met with all other waste codes associated with the waste prior to the disposal.

Mr. Willoughby stated the variance request was received after the November Board meeting and since the Board did not meet in December 2005, the Division recommended approval of the request at this meeting. The public comment period began on December 13, 2005 and ended on January 11, 2006. No comments were received. A public hearing was held on January 3, 2006, at the Tooele County Courthouse, no comments were received. Dan Shrum, Envirocare Representative, was also available to answer any additional questions.

William Doucette asked if it was appropriate to consider a way to change the wording in the rules to allow for flexibility so that renewal of this kind of variance request does not have to continue. Raymond Wixom stated that if the Board so desires, it could be looked into. Mr. Doucette stated that it gets to the point that it defeats the purpose of the variance request if it is done time and time again. Mr. Doucette stated he would like this option looked into by the Board counsel as it looks like a reasonable solution to this issue. Craig Anderson asked if Mr. Wixom and Mr. Willoughby would review the options and report back to the Board on this matter in a future meeting.

Dennis Downs expressed a concern that the State not make the rules less stringent than the EPA federal rules. If a rule is formulated that would put this issue permanently in place, that may jeopardize the State's authorization status with the EPA. Mr. Downs stated once this issue is thoroughly reviewed, it will be brought back to the Board. Mr. Doucette stated that he assumed that this request will happen again. Mr. Willoughby agreed and stated that the one thing that changes from year-to-year in each variance request is the amount of waste. Board members asked if the variance is limited to the 1200 cubic feet. Mr. Willoughby stated that on this particular variance request, the waste stream approved is for a total of 1200 cubic feet. If the waste stream exceeds that approved 1200 cubic feet, Envirocare would have to come back before the Board for additional approval. Craig Anderson asked if Envirocare expects to continue to receive this waste. Mr. Willoughby stated that Envirocare does expect to continue to receive the mercury waste.

**It was motioned by John Newman and seconded by Gary Mossor and unanimously approved that Envirocare's request for a site-specific treatment variance for waste code D009 (High Mercury-Subcategory Inorganic) be approved based on the following findings: the proposed alternative treatment method meets the regulatory basis for a variance, will be as safe to human health and the environment as the required method, and the required method would create additional waste, and require waste handling that could possibly expose workers to unnecessary contact with the waste. Also, Envirocare has successfully treated similar waste streams in the past using this approach.**

## **VIII. Chemical Demilitarization TOCDF Update**

Marty Gray stated that TOCDF is continuing with its change-over activities to prepare for the mustard campaign. At the end of February 2006, TOCDF is scheduled to conduct a secondary waste demonstration test. This test will be on waste that is generated at the site. Also, in April 2006, TOCDF is programmed to sample every mustard ton container to be able to sort between the high/low mercury and high/low solid ton containers. The beginning of mustard operations is currently scheduled for late July 2006.

The Division staff members are working on two permit modifications that deal with the mustard operations. The first one deals with the monitoring for mustard, and the second one deals with the processing of the low mercury mustard ton containers. The permit modifications also include trial burn tests for both the liquid incinerator and the metal parts furnace.

CAMDS is currently shut-down as a result of a letter of concern that the Executive Secretary sent to CAMDS regarding the results of the annual inspection conducted in September 2005. A meeting is scheduled for next week to discuss the progress CAMDS has taken to ensure all concerns have been addressed before start up takes place. Start up is anticipated to take place in February 2006.

A "Performance Based Contract" for correction action has been award to Dugway Proving Ground. A contractor will be given various tasks to complete and will be provided a set amount of funding to accomplish the various tasks given. The Division anticipates a great deal of progress will be made on the old dump sites throughout the upcoming summer. It is anticipated that at least ten sites will be closed out by the end of the summer. To date, the Division has closed out approximately seventy hazardous waste dump sites at Dugway.

Dennis Riding asked what a "Performance Based Contract" means to the contractor. Mr. Gray stated that the "Performance Based Contract" basically means that the contractor has to finish the job. Once the job is finished, they will get paid the amount specified in their contract. Mr. Gray stated that the contractors have to meet the State's expectations and statutes regarding regulations, policies, and cleanup standards. The contractors also have to meet certain Army regulations as well. Mr. Riding asked if the contract is intended to foster innovative solutions. Mr. Gray stated that such a contract could foster innovative solutions and encourage the contractors to spend less time studying and more time getting the job done.

## **XI. Other Business**

### **A. Legislative Update**

Dennis Downs reminded the Board that the Utah State Legislature will convene on January 16, 2006 and will conclude its session on March 1, 2006. The Department has initiated one request dealing with the Lead Acid Battery Disposal Act. The information regarding the Reauthorization of the Lead Acid Battery Disposal Act was provided previously to the Board. This bill is scheduled to sunset next July unless it is reauthorized by the Legislature. This bill did receive a favorable unanimous recommendation by the Interim Committee. The Lead Acid Battery Disposal Act will be included in HB43, the Sunset Review and Authorization bill. HB43 requests reauthorization of the Lead Acid Battery Disposal Act for an additional ten years.

Three other bills were briefly mentioned: (1) Proposed legislation dealing with mercury switches in automobiles. There are convenience switches in automobiles (mainly in trunk/hood lights) that automatically go on. The switch that performs this task is a mercury activated switch. Because of the problems associated with mercury throughout the country, many states are taking action to get these mercury switches out of the waste stream, and into recycling programs. The United States and the European automobile industries are no longer using mercury in these switches. (2) Disposal of electronic wastes. There is interest by some legislators to continue to encourage proper recycling of these types of waste rather than just disposal in the landfills. The Department is supportive of any initiative for the proper disposal of electronic waste. The Division has been working with companies that sell the electronic items, as well as, the local health departments that sponsor electronic waste collection days that send the electronic waste to the recycling centers rather than disposal in the landfills. It is anticipated that the sponsors would be encouraging education, public outreach, community involvement

on a voluntary basis with the commercial outlets so that the recycling of the electronic waste will increase, rather than some stringent requirements on the disposal of the electronic waste. Mr. Downs stated that a specific staff member has been tasked to spend time working on the coordination of proper disposal of electronic waste. A meeting will be scheduled in May 2006 that will include regulatory personnel, environmental personnel, commercial outlets, and recyclers, which will focus on sharing information and discuss how to increase the amount of activity in recycling electronic wastes. The Board will be notified on the date of the meeting and will be invited to attend if interested. (3) Solid and Hazardous Waste fees. At this time, there is no information on any proposal regarding solid and hazardous waste fees. However, it is anticipated that the fee issue will arise.

**B. The next Board meeting will be held on February 9, 2006 at 1:00 p.m., in the DEQ Building #2, Conference Room 101.**